

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES A. PETTAWAY,)	
)	
Petitioner,)	No. C 04-2708 CRB (PR)
)	
vs.)	ORDER
)	
DAVID L. RUNNELS, Warden,)	(Doc # 23)
)	
Respondent.)	

On December 5, 2005, the court denied on the merits petitioner's application for a writ of habeas corpus under 28 U.S.C. § 2254 and the clerk entered judgment in favor of respondent.

On September 30, 2009, petitioner filed a "notice of appeal and application for certificate of appealability" namely requesting an extension of time to appeal. The request for an extension of time to appeal (doc # 23) must be denied as untimely under Federal Rules of Appellate Procedure 4(a)(5) and 4(a)(6). See Fed. R. App. P. 4(a)(5) (motion for extension of time under Rule 4(a)(5) must be filed within 30 days after time to appeal has expired); Fed. R. App. P. 4(a)(6) (motion for extension of time under Rule 4(a)(6) must be filed within 180 days of the entry of judgment or 7 days from receipt of notice of judgment, whichever occurs first). In a nutshell, relief from the expiration of the time to appeal may not be sought after the 180-day period in Rule 4(a)(6) has expired. See In re Stein, 197 F.3d 421, 425 (9th Cir. 2000); see also id. at 426-27

1 (Rule 4(a) is exclusive avenue for relief from expiration of period to file timely
2 notice of appeal; Fed. R. Civ. Proc. 60(b) cannot be used to avoid expiration of
3 180-day time period).

4 Petitioner's request for a certificate of appealability (doc # 23) is denied
5 because petitioner has not made "a substantial showing of the denial of a
6 constitutional right." 28 U.S.C. § 2253(c)(2). Petitioner has not demonstrated
7 that "reasonable jurists would find the district court's assessment of the
8 constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484
9 (2000).

10 The clerk shall forward to the court of appeals the case file with this order.
11 See United States v. Asrar, 116 F.3d 1268, 1270 (9th Cir. 1997).

12 SO ORDERED.

13 DATED: Oct. 8, 2009

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16 CHARLES R. BREYER
17 United States District Judge
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